Education Realty Trust, Inc.
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PROSPECTUS SUPPLEMENT
(To prospectus dated September 7, 2012)

Up to $150,000,000 Common Stock

This prospectus supplement and the accompanying prospectus relate to the issuance and sale, from time to time, of our common stock, par value $0.01 per share, pursuant to an at-the-market equity program having an aggregate gross sales price of up to $150,000,000 through our sales agents, KeyBanc Capital Markets Inc., RBC Capital Markets, LLC and Merrill Lynch, Pierce, Fenner & Smith Incorporated, collectively, the Managers. These sales will be made pursuant to the terms of separate equity distribution agreements that were entered into among us, Education Realty Operating Partnership, LP, or our Operating Partnership, and each Manager on October 24, 2014.

Sales of shares of our common stock, if any, under this prospectus supplement and the accompanying prospectus may be made in transactions that are deemed to be at-the-market offerings, as defined in Rule 415 under the Securities Act of 1933, as amended, or the Securities Act, including sales made by means of ordinary brokers transactions on the New York Stock Exchange, or NYSE, to or through a market maker at market prices prevailing at the time of sale, at prices related to prevailing market prices or at negotiated prices. The Managers are not required, individually or collectively, to sell any specific number or dollar amount of common stock, but each Manager will use commercially reasonable efforts consistent with its normal trading and sales practices to sell shares of our common stock on terms mutually agreeable to the Manager and us.

Shares of our common stock to which this prospectus supplement relates will be sold through only one Manager on any given day.

Each Manager will be entitled to compensation that will not exceed, but may be lower than, 2.0% of the gross sales price per share for any shares of common stock sold through it from time to time under its respective equity distribution agreement. In connection with the sale of common stock on our behalf, the Managers may be deemed to be underwriters within the meaning of the Securities Act, and the compensation of the Managers may be deemed to be underwriting discounts or commissions.

We also may sell shares of common stock to a Manager as principal for its own account at a price agreed upon at the time of sale. If we sell shares of common stock to a Manager as principal, we will enter into a separate terms agreement setting forth the terms of such transaction, and we will describe any such agreement in a separate prospectus supplement or pricing supplement.

Our common stock is listed on the NYSE under the symbol EDR. The last reported sale price of our common stock on the NYSE on October 23, 2014 was $11.10 per share.

To assist us in continuing to qualify as a real estate investment trust for federal income tax purposes, among other purposes, our charter imposes certain restrictions on the ownership of our capital stock. See Description of Capital Stock in the accompanying prospectus.

Investing in shares of our common stock involves substantial risks that are described in the Risk Factors sections beginning on page S-4 of this prospectus supplement and in our most recent Annual Report on Form 10-K, as well as additional risks that may be described in future reports or information that we file with the Securities and Exchange Commission, or the SEC, including our Quarterly Reports on Form 10-Q, which are incorporated by reference in this prospectus supplement and the accompanying prospectus.

Neither the SEC nor any state or other securities commission has approved or disapproved of these securities or determined if this prospectus supplement or the accompanying prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

KeyBanc Capital Markets **RBC Capital Markets** **BofA Merrill Lynch**

The date of this prospectus supplement is October 24, 2014.

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Prospectus Supplement

Prospectus

You should rely only upon the information contained or incorporated by reference in this prospectus supplement, the accompanying prospectus and any related free writing prospectus required to be filed with the SEC. We have not, and the Managers have not, authorized any person to provide you with different or additional information. If anyone provides you with different or additional information, you should not rely upon it. We are not, and the Managers are not, making an offer to sell these securities in any jurisdiction where such offer or sale is not permitted. You should assume that the information appearing in this prospectus supplement, the accompanying prospectus, the documents incorporated by reference herein and therein and any such free writing prospectus is accurate only as of the respective dates of these documents or such other dates as may be specified therein. Our business, financial condition, liquidity, results of operations, funds from

operations, or FFO, and prospects may have changed since those dates.

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ABOUT THIS PROSPECTUS SUPPLEMENT

This document is presented in two parts. The first part is comprised of this prospectus supplement, which describes the specific terms of this offering and certain other matters relating to us. The second part, the accompanying prospectus, contains a description of our common stock and provides more general information regarding securities that we may offer from time to time, some of which does not apply to this offering. To the extent that the information contained in this prospectus supplement differs or varies from the information contained in the accompanying prospectus or documents that we previously filed with the SEC, the information in this prospectus supplement will supersede such information.

This prospectus supplement is part of a registration statement that we have filed with the SEC relating to, among other things, the securities offered hereby. This prospectus supplement does not contain all of the information that we have included in the registration statement and the accompanying exhibits and schedules thereto in accordance with the rules and regulations of the SEC, and we refer you to such omitted information. It is important for you to read and consider all information contained in this prospectus supplement and the accompanying prospectus in making your investment decision. You should also read and consider the additional information incorporated and deemed to be incorporated by reference in this prospectus supplement and the accompanying prospectus. See Where You Can Find More Information in this prospectus supplement.

All references to we, our, us, EdR and the Company in this prospectus supplement and the accompanying prosp refer to Education Realty Trust, Inc. and its consolidated subsidiaries, except where it is made clear that any such reference means only Education Realty Trust, Inc.

FORWARD-LOOKING STATEMENTS

Certain statements in this prospectus supplement, the accompanying prospectus and the documents that are incorporated and deemed to be incorporated by reference herein and therein contain forward-looking statements within the meaning of Section 27A of the Securities Act and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act. Forward-looking statements provide our current expectations or forecasts of future events and are not statements of historical fact.

These forward-looking statements include information about possible or assumed future events, including, among other things, discussion and analysis of our future financial condition, results of operations and FFO, our strategic plans and objectives, cost management, occupancy and leasing rates and trends, liquidity and ability to refinance our indebtedness as it matures, anticipated capital expenditures (and access to capital) required to complete projects, amounts of anticipated cash distributions to our stockholders in the future and other matters. Words such as anticipates, expects, intends, plans, believes, seeks, estimates and variations of these words and similar ex intended to identify forward-looking statements. These statements are not guarantees of future performance and are subject to risks, uncertainties and other factors, some of which are beyond our control, are difficult to predict and/or could cause actual results to differ materially from those expressed or forecasted in the forward-looking statements.

Forward-looking statements involve inherent uncertainty and may ultimately prove to be incorrect or false. You are cautioned not to place undue reliance on forward-looking statements. Except as otherwise required by law, we undertake no obligation to update or revise forward-looking statements to reflect changed assumptions, the occurrence of unanticipated events or actual operating results. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of various factors, including, but not limited to:

risks and uncertainties related to the national and local economies and the real estate industry in general and in our specific markets (including university enrollment conditions and admission policies and our relationships with these universities);

volatility in the capital markets;

rising interest and insurance rates;

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- competition from university-owned or other private collegiate housing and our inability to obtain new tenants on favorable terms (including rental rates), or at all, upon the expiration of existing leases;
- availability and terms of capital and financing, both to fund our operations and to refinance our indebtedness as it matures;
- legislative or regulatory changes, including changes to laws governing collegiate housing, construction and REITs;
- our possible failure to qualify as a REIT and the risk of changes in laws affecting REITs;
- our dependence upon key personnel whose continued service is not guaranteed;
- our ability to identify, hire and retain highly-qualified executives in the future;
- availability of appropriate acquisition and development targets;
- failure to make acquisitions on attractive terms or integrate acquisitions successfully;
- the financial condition and liquidity of, or disputes with, our joint venture and development partners;
- impact of ad valorem, property and income taxes;
- changes in generally accepted accounting principles;
- construction delays, increasing construction costs or construction costs that exceed estimates;
- potential liability for uninsured losses and environmental liabilities;
- lease-up risks; and
- the potential need to fund improvements or other capital expenditures out of operating cash flow.

This list of risks and uncertainties, however, is only a summary of some of the most important factors and is not intended to be exhaustive. You should carefully review the risks described below under Risk Factors in this prospectus supplement and the accompanying prospectus and under the caption Item 1A. Risk Factors of our most recent Annual Report on Form 10-K and the other information that we file from time to time with the SEC that is incorporated by reference in this prospectus supplement and the accompanying prospectus. New factors that are not currently known to us or of which we are currently unaware may also emerge from time to time that could materially and adversely affect us.

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SUMMARY

This summary is not complete and does not contain all of the information that you should consider before deciding whether to invest in shares of our common stock. To understand this offering fully prior to making an investment decision, you should carefully read this prospectus supplement, the accompanying prospectus and the documents incorporated by reference herein and therein. See Where You Can Find More Information in this prospectus supplement. You should also carefully consider the Risk Factors sections in this prospectus supplement and in our most recent Annual Report on Form 10-K, which we have filed with the SEC and which is incorporated by reference in this prospectus supplement and the accompanying prospectus, as well as additional risks that may be described in future reports and information that we file with the SEC, including our Quarterly Reports on Form 10-Q.

The Company

We are a self-managed and self-advised real estate investment trust, or REIT, organized in July 2004 to develop, acquire, own and manage collegiate housing communities located on or near university campuses. As of September 30, 2014, we owned 53 collegiate housing communities located in 21 states with 29,765 beds within 11,160 units on or near 41 university campuses, and we provide third-party management services for 22 collegiate housing communities located in 10 states with 11,510 beds within 3,676 units on or near 17 university campuses. We also selectively develop collegiate housing communities for our own account and provide third-party development consulting services on collegiate housing development projects for universities and other third parties.

All of our assets are held by, and we conduct substantially all of our activities through, Education Realty Operating Partnership, LP, or our Operating Partnership, and its wholly owned subsidiaries, including EdR Management Inc., the company through which we conduct management activities, and EdR Development LLC, the company through which we conduct development activities.

We are the sole general partner of our Operating Partnership. As a result, our board of directors effectively directs all of the Operating Partnership s affairs. As of September 30, 2014, we owned 99.4% of the outstanding partnership units of our Operating Partnership. The remaining Operating Partnership units are held by former owners of certain of our collegiate housing communities, including a member of our management team and one of our directors.

University Towers Operating Partnership, LP, or the University Towers Partnership, which is our affiliate, owns and operates our University Towers collegiate housing community located in Raleigh, North Carolina. We are the sole general partner, and as of September 30, 2014 we owned 72.7% of the outstanding partnership units of the University Towers Partnership, and the remaining 27.3% was owned by former owners of our University Towers collegiate housing community, including one of our directors.

Our executive offices are located at 999 South Shady Grove Road, Suite 600, Memphis, Tennessee 38120, and our telephone number is (901) 259-2500. Our website address is *http://www.edrtrust.com*. However, the information located on, or accessible from, our website is not, and shall not be deemed to be, a part of this prospectus supplement or the accompanying prospectus or incorporated into any other filings that we make with the SEC.

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Recent Developments

Fall 2014 Leasing Update

The same-community portfolio opened the 2014/2015 lease term 96.3% occupied compared to an opening occupancy of 94.3% in the prior year. In addition, same-community net rental rates increased 2.0% over the prior year.

2014 Development Deliveries

We delivered all of our 2014 development projects, including the pre-sale at Florida International University, for an aggregate cost of $303.7 million.

Completed Acquisitions

On September 15, 2014, we closed on the acquisition of The District on Apache, a 900-bed community adjacent to Arizona State University, for approximately $89.8 million. The community opened in August 2013 and is currently 100% leased for the 2014/2015 lease term.

Completed Dispositions

We completed the sales of two older, non-pedestrian to campus communities at the University of South Carolina and Auburn University, on July 1 and July 14 of 2014, respectively. The $29.9 million of net proceeds received from these dispositions was used to pay-off approximately $16.7 million of mortgage debt, with an average interest rate of 4.9%, and to reduce amounts outstanding under our unsecured revolving credit facility. A gain of approximately $8.4 million was recognized related to the transactions.

On October 8, 2014, we completed the sale of the collegiate housing community known as The Pointe at South Florida, located in Tampa, Florida, for approximately $31 million in cash. We used net proceeds from the sale of approximately $29.7 million, after closing costs and prorations, to reduce outstanding debt, fund development and acquisition opportunities and for general corporate purposes.

Distributions

Our Board authorized and we declared a quarterly distribution of $0.12 per share of common stock for the three months ended September 30, 2014. The distribution will be paid on November 15, 2014 to stockholders of record at the close of business on October 31, 2014.

At-The-Market Equity Program

During the three months ended September 30, 2014, we sold approximately 2.9 million shares of common stock at an average price of $10.86 per share, resulting in net proceeds of approximately $31.5 million, which were used to reduce the amounts outstanding under our unsecured revolving credit facility and fund our development pipeline.

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THE OFFERING

Securities Offered	Shares of common stock having an aggregate gross sales price of up to $150,000,000.
Manner of offering	At-the-market offering that may be made from time to time through our Managers, KeyBanc Capital Markets Inc., RBC Capital Markets, LLC and Merrill Lynch, Pierce, Fenner & Smith Incorporated. See Plan of Distribution .
Use of proceeds	We intend to contribute the net proceeds from this offering to our Operating Partnership in exchange for a number of partnership units to be issued by the Operating Partnership equal to the number of shares of common stock sold in this offering. The Operating Partnership intends to use the net proceeds from this offering for the funding or partial funding of the acquisition or the development of collegiate housing communities, the improvement of collegiate housing communities, the repayment of debt or for general corporate purposes. See Use of Proceeds in this prospectus supplement.
Restriction on ownership	In order to assist us in maintaining our qualification as a REIT for federal income tax purposes, among other purposes, ownership, actual or constructive, by any person of more than (i) 9.8% in value, number or voting power (whichever is more restrictive) of shares of our capital stock or (ii) 9.8% in value, number or voting power (whichever is more restrictive) of shares of our common stock is restricted by our charter. This restriction may be waived prospectively or retroactively by our board of directors, in its sole and absolute discretion, upon satisfaction of certain conditions. See Description of Capital Stock in the accompanying prospectus.
Risk factors	An investment in shares of our common stock involves substantial risks, and prospective investors should carefully consider the matters discussed in the Risk Factors sections of this prospectus supplement and in our most recent Annual Report on Form 10-K, as well as the other information that we have filed with the SEC and which is incorporated by reference in this prospectus supplement and the accompanying prospectus, for a discussion of risks you should consider carefully before making an investment decision.
New York Stock Exchange Symbol	EDR

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RISK FACTORS

An investment in shares of our common stock involves substantial risks. In consultation with your own financial and legal advisers, you should carefully consider, among other matters, the factors set forth below as well as under the caption Item 1A. Risk Factors in our most recent Annual Report on Form 10-K, as may be revised or supplemented by our subsequent quarterly reports on Form 10-Q, which are incorporated by reference in this prospectus supplement. You should also carefully consider the rest of this prospectus supplement, the accompanying prospectus and the documents incorporated by reference herein and therein before deciding whether an investment in shares of our common stock is suitable for you. If any of the risks disclosed in or incorporated by reference in this prospectus supplement or the accompanying prospectus develop into actual events, our business, financial condition, liquidity, results of operations, FFO and prospects could be materially and adversely affected, the market price of our common stock could decline and you may lose all or part of your investment.

We may be unable to invest a significant portion of the net proceeds from this offering on acceptable terms.

Delays in investing the net proceeds from this offering may impair our performance. We cannot assure you that we will be able to identify any collegiate housing communities, development opportunities or other investments that meet our investment objectives or that any investment that we make will produce a positive return. We may be unable to invest the net proceeds from this offering on acceptable terms within the time period that we anticipate or at all, which could harm our financial condition and operating results.

Moreover, we will have significant flexibility in investing the net proceeds from this offering and may use the net proceeds from this offering in ways with which investors may not agree.

Volatility and disruption in capital markets could materially and adversely impact us.

The capital markets may experience extreme volatility and disruption, which could make it more difficult to raise equity capital. If we cannot access capital or we cannot access capital upon acceptable terms, we may be required to liquidate one or more investments in properties at times that may not permit us to realize the maximum return on those investments, which could also result in adverse tax consequences to us. Moreover, market turmoil could lead to an increased lack of consumer confidence and widespread reduction of business activity generally, which may materially and adversely impact us, including our ability to acquire and dispose of assets and continue our development pipeline.

The market price of our common stock may be volatile in the future. As with other public companies, the availability of debt and equity capital depends, in part, upon the market price of our common stock and investor demand, which, in turn, depends upon various market conditions that change from time to time. Among the market conditions and other factors that may affect the market price of our common stock is the market s perception of our current and future financial condition, liquidity, growth potential, earnings, FFO and cash distributions. Our failure to meet the market s expectation with regard to any of these or other items would likely adversely affect the market price of our common stock, possibly materially. We cannot assure you that we will be able to raise the necessary capital to meet our debt service obligations, make distributions to our stockholders or make future investments necessary to implement our business plan, and the failure to do so could have a material adverse effect on us.

This offering is expected to be dilutive, and there may be future dilution related to our common stock.

Giving effect to the issuance of shares of common stock in this offering, the receipt of the expected net proceeds and the use of those proceeds, we expect that this offering will have a dilutive effect on our expected earnings per share and our FFO per share. The actual amount of dilution cannot be determined at this time and will be based upon numerous factors which are currently not known to us. Additionally, we are not restricted from issuing additional securities, including common stock, securities that are convertible into or exchangeable or exercisable for common stock or preferred stock or any substantially similar securities, in the future. Future issuances or sales of substantial amounts of our common stock may be at prices below the offering price of the common stock offered by this prospectus supplement and may result in further dilution in our earnings per share and FFO per share and/or adversely impact the market price of our common stock.

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Future sales or issuances of our common stock may cause the market price of our common stock to decline.

The sale of substantial amounts of our common stock, whether directly by us or in the secondary market, the perception that such sales or other issuances of common stock could occur or the availability for future sale or issuance of shares of our common stock or securities convertible into or exchangeable or exercisable for our common stock could materially and adversely affect the market price of our common stock and our ability to raise capital through future offerings of equity or equity-related securities. In addition, we may issue capital stock or other equity securities senior to our common stock in the future for a number of reasons, including to finance our operations and business plan, to adjust our ratio of debt to equity, to satisfy obligations upon the exchange of partnership units in the Operating Partnership and the University Towers Partnership or for other reasons.

The market price of our common stock may fluctuate significantly.

The market price of our common stock may fluctuate significantly in response to many factors, including:

- actual or anticipated variations in our operating results, FFO, cash flows or liquidity;
- change in our earnings or FFO estimates or those of analysts and any failure to meet such estimates;
- changes in our distribution policy;
- publication of research reports about us, the collegiate housing industry or the real estate industry generally;
- increases in market interest rates that lead purchasers of our common stock to demand a higher dividend yield;
- changes in market valuations of similar companies;
- adverse market reaction to the amount of our outstanding debt at any time, the amount of our maturing debt in the near and medium term and our ability to refinance such debt and the terms thereof or our plans to incur additional debt in the future;
- additions or departures of key management personnel, including our ability to find desired replacements;
- actions by institutional stockholders;
- speculation in the press or investment community;
- the realization of any of the other risk factors included in, or incorporated by reference in, this prospectus supplement and the accompanying prospectus; and
- general market and economic conditions.

Many of the factors listed above are beyond our control. Those factors may cause the market price of our common stock to decline, regardless of our financial performance, condition and prospects. It is impossible to provide any assurance that the market price of our common stock will not decline in the future, and it may be difficult for our stockholders to resell their shares of our common stock in the amount or at prices or times that they find attractive, or at all.

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USE OF PROCEEDS

We intend to contribute the net proceeds from this offering to our Operating Partnership in exchange for a number of partnership units to be issued by our Operating Partnership equal to the number of shares of common stock sold in this offering. Except as we may otherwise provide in any free writing prospectus that we authorize to be provided to you, our Operating Partnership intends to use the net proceeds from this offering for the funding or partial funding of the acquisition or the development of collegiate housing communities, the improvement of collegiate housing communities, the repayment of debt or for general corporate purposes.

Our Operating Partnership intends to use a portion of the net proceeds from this offering to reduce the outstanding balance on our unsecured revolving credit facility. Our $500 million revolving credit facility matures on January 14, 2018 and accrues interest equal to a base rate or London InterBank Offered Rate, plus an applicable margin based upon our leverage. As of September 30, 2014, we had $210 million outstanding under the revolving credit facility and the annual interest rate was 1.46%.

Affiliates of the Managers are lenders under our unsecured revolving credit facility. Accordingly, each such affiliate will receive its pro rata share of the net proceeds from this offering used to reduce amounts outstanding under our unsecured revolving credit facility.

Pending application of any portion of the net proceeds, we may invest it in interest-bearing accounts and short-term, interest-bearing securities as is consistent with our intention to maintain our qualification for taxation as a REIT. Such investments may include, for example, obligations of the Government National Mortgage Association, other government and governmental agency securities, certificates of deposit and interest-bearing bank deposits.

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U.S. FEDERAL INCOME TAX CONSIDERATIONS

The following disclosure supersedes the discussion in the prospectus dated September 7, 2012 under Material U.S. Federal Income Tax Consideration.

This section summarizes the material U.S. federal income tax considerations that you, as a prospective investor, may consider relevant in connection with the acquisition, ownership and disposition of our common stock and our election to be taxed as a REIT. As used in this section, the terms we and our refer solely to Education Realty Trust, Inc. and not to our subsidiaries and affiliates, which have not elected to be taxed as REITs for U.S. federal income tax purposes.

This discussion does not exhaust all possible tax considerations and does not provide a detailed discussion of any state, local or foreign tax considerations. Nor does this discussion address all aspects of U.S. federal income taxation that may be relevant to particular investors in light of their personal investment or tax circumstances, or to certain types of investors that are subject to special treatment under the U.S. federal income tax laws, such as insurance companies, tax-exempt organizations (except to the limited extent discussed below under Taxation of Tax-Exempt Stockholders), financial institutions, broker-dealers, persons subject to the alternative minimum tax, persons holding our stock as part of a hedge, straddle or other risk reduction, constructive sale or conversion transaction, non-U.S. individuals and foreign corporations (except to the limited extent discussed below under Taxation of Non-U.S. Stockholders) and other persons subject to special tax rules. Moreover, this summary assumes that our stockholders hold our common stock as a capital asset for U.S. federal income tax purposes, which generally means property held for investment.

The statements in this section are based on the current U.S. federal income tax laws, including the Internal Revenue Code of 1986, as amended, or the Code, the regulations promulgated by the U.S. Treasury Department or the Treasury Regulations, rulings and other administrative interpretations and practices of the Internal Revenue Service, or the IRS, and judicial decisions, all as currently in effect, and all of which are subject to differing interpretations or to change, possibly with retroactive effect. This discussion is for general purposes only and is not tax advice. We cannot assure you that new laws, interpretations of law, or court decisions, any of which may take effect retroactively, will not cause any statement in this section to be inaccurate.

We urge you to consult your own tax advisor regarding the specific tax consequences to you of the acquisition, ownership and disposition of our common stock and of our election to be taxed as a REIT. Specifically, you are encouraged to consult your own tax advisor regarding the U.S. federal, state, local, foreign, and other tax consequences of such acquisition, ownership, disposition and election, and regarding potential changes in applicable tax laws.

Taxation of Our Company

We elected to be taxed as a REIT under the federal income tax laws beginning with our taxable year ended December 31, 2005. We believe that, beginning with such taxable year, we have been organized and have operated in such a manner as to qualify for taxation as a REIT under the Code, and we intend to continue to operate in such a manner. However, no assurances can be provided regarding our qualification as a REIT because such qualification depends on our ability to satisfy numerous asset, income, stock ownership and distribution tests described below, the satisfaction of which will depend, in part, on our operating results.

The sections of the Code relating to qualification, operation and taxation as a REIT are highly technical and complex. The following discussion sets forth only the material aspects of those sections. This summary is qualified in its entirety by the applicable Code provisions and the related Treasury Regulations and administrative and judicial interpretations thereof.

In connection with the filing of this prospectus supplement, Morrison & Foerster LLP has rendered an opinion that we have been organized and have operated in conformity with the requirements for qualification and taxation as a REIT under the U.S. federal income tax laws for our taxable years ended December 31, 2009 through December 31, 2013, and our current and proposed method of operation will enable us to satisfy the requirements for qualification and taxation as a REIT under the U.S. federal income tax laws for our taxable year ending December 31, 2014 and thereafter. Investors should be aware that Morrison & Foerster

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LLP s opinion is based on the U.S. federal income tax laws governing qualification as a REIT as of the date of such opinion, which is subject to change, possibly on a retroactive basis, is not binding on the IRS or any court, and speaks only as of the date issued. In addition, Morrison & Foerster LLP s opinion is based on customary assumptions and is conditioned upon certain representations made by us as to factual matters, including representations regarding the nature of our assets and the future conduct of our business. Moreover, our continued qualification and taxation as a REIT depend on our ability to meet, on a continuing basis, through actual results, certain qualification tests set forth in the U.S. federal income tax laws. Those qualification tests involve, among other things, the percentage of our gross income that we earn from specified sources, the percentage of our assets that falls within specified categories, the diversity of our stock ownership and the percentage of our earnings that we distribute. Morrison & Foerster LLP will not review our compliance with those tests on a continuing basis. Accordingly, no assurance can be given that the actual results of our operations for any particular taxable year will satisfy such requirements. Morrison & Foerster LLP s opinion does not foreclose the possibility that we may have to use one or more of the REIT savings provisions described below, which may require us to pay a material excise or penalty tax in order to maintain our REIT qualification. For a discussion of the tax consequences of our failure to maintain our qualification as a REIT, see Failure to Qualify as a REIT below.